

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**PHILIPPINE SAVINGS BANK,
*Petitioner,***

-versus-

**G.R. No. 111173
September 4, 1996**

**NATIONAL LABOR RELATIONS
COMMISSION and VICTORIA T.
CENTENO,**

Respondents.

X-----X

D E C I S I O N

MENDOZA, J.:

This is a Petition for *Certiorari* to annul the Decision of the National Labor Relations Commission in NLRC Case No. RB-IV-2-1554-85, affirming the decision of the Labor Arbiter, which found petitioner guilty of illegal dismissal, and the resolution of the NLRC denying reconsideration.

The facts are as follows:

Private respondent Victoria T. Centeno started, as a bank teller of petitioner Philippine Savings Bank, on November 3, 1965. Through the years she was promoted, becoming on February 4,

1985, assistant cashier of petitioner's Taytay branch, at a salary of P2,672.00 a month.

From September 17, 1984 to November 15, 1984, private respondent was acting branch cashier, substituting for Mrs. Victoria Ubaña, who had gone on maternity leave. As acting branch cashier, private respondent was in charge of the cash in the vault and the preparation of the daily cash proof sheet, which was a daily record of the cash of the cash in the vault and was used as basis in determining the starting balance on the next banking day.

On November 16, 1984, Mrs. Victoria Ubaña reported back to work. Before turning over the cash to Mrs. Ubaña, private respondent Centeno deposited P356,400.00 in the Metropolitan Bank and Trust Co. (Metrobank). However, what appeared as amount deposited in the November 16, 1984 cash proof and batch sheets of the cashier and clearing clerk, was P371,400.00, and not P356,400.00 as shown in the Metrobank passbook. Petitioner later charged that private respondent falsified the deposit slip and made it appear that she had deposited P371,400.00 when actually she had deposited only P356,400.00.

On December 18, 1984, the branch accounting clerk, Lolita Oliveros, discovered a discrepancy between the cash deposit recorded (P371,400.00) in the cash proof and batch sheets and the deposit actually made (P356,400.00) as reflected in the Metrobank passbook. She called the attention of the clearing clerk, Alberto C. Jose, to the matter. They reviewed the records and found that what had been attached to the debit ticket of Jose was a deposit slip for P356,400.00, and not for P371,400.00.

An audit team reviewed the account of the branch and found a P15,000.00 shortage incurred on November 16, 1984, the day private respondent turned over her accountability to Mrs. Ubaña after the latter's maternity leave.

A committee was formed to investigate the shortage. Private respondent, the branch manager, Eladio C. Laurena, the cashier, Victoria N. Ubaña, the clearing clerk, Alberto C. Jose, and two other employees were called to the investigation. The committee found private respondent accountable for the shortage.^[1] Hence, on January 7, 1985, private respondent was given a memorandum which stated:

In connection with the shortage of P15,000.00 at Taytay Branch which has been recently discovered by the Auditing Department which shortage appears to have been deliberately perpetuated through falsifications of various documents, all of which appear to have been done by you, you are hereby required to submit your explanation within seventy two (72) hours from receipt of this memo why no administrative and/or disciplinary action shall be taken against you.

In the meantime, you are hereby preventively suspended for a period of thirty (30) days effective January 8, 1985. (Emphasis added)

The manager, cashier, clearing clerk and a teller, were also given “show-cause” memoranda, but only private respondent was placed under preventive suspension.

All those required to show cause filed their respective answers, except private respondent. Instead she requested the bank’s vice-president, Antonio Viray, on January 15, 1985, to give her until January 18, 1985, within which to file her answer on the ground that she needed to consult her lawyer. Her request was granted but private respondent nonetheless failed to answer the charges against her.

On February 4, 1985, private respondent was dismissed by the bank.

The memorandum to her read:

Memorandum

To : MS. VICTORIA T. CENTENO

Assistant Cashier
Taytay Branch

This is in connection with the shortage of P15,000.00 at Taytay Branch which was incurred while you were in charge of the vault. Immediately after the discovery of the shortage, through the memorandum of the undersigned dated January 7, 1985 addressed to you, we required you to explain within seventy two (72) hours from receipt of said memo why no administrative and/or disciplinary action should be taken against you. Despite the lapse of the extension period you requested within which to submit your explanation, and up to this date, you have not submitted your explanation.

After carefully evaluating the evidence presented and considering your failure to explain the shortage which tantamounts to admission of guilt, we have no alternative but to conclude, as we hereby conclude, that you were the one who misappropriated the shortage of P15,000.00. You have therefore forfeited the confidence that the Bank has reposed on you as an officer.

IN VIEW OF THE FOREGOING, Management hereby dismisses you FOR CAUSE effective immediately with forfeiture of all benefits. The Bank reserves the right to take such actions it may deem necessary for the recovery of the P15,000.00. (Emphasis added)

Private respondent sued petitioner for illegal dismissal before the Labor Arbiter. Aside from claiming that her dismissal was without basis, she claimed that she was denied due process because she had not been informed of the specific acts for which she was dismissed. She claimed that during her 19 years of service in petitioner bank, she never “[played] fast and loose with bank funds.”

Petitioner alleged that private respondent was dismissed for loss of trust and confidence as a result of the shortage, which, according to petitioner, she tried to conceal by falsifying the bank’s cash proof sheet and the teller’s vouch. Petitioner claimed that private respondent was accorded due process prior to her dismissal.

On September 15, 1988, the Labor Arbiter found petitioner guilty of having illegally dismissed private respondent and of denying her due process. Accordingly the Labor Arbiter ordered:

WHEREFORE, responsive to the foregoing, judgment is as it is hereby entered in favor of complainant and against respondent:

1. Considering the termination of complainant illegal;
2. Ordering respondent to reinstate complainant to her former position or equivalent position with full backwages from the time of her unlawful termination and until actually reinstated without loss of seniority rights and other privileges appertaining to her position;
3. Ordering respondent to pay complainant moral and exemplary damages in the amounts of Fifty. Thousand Pesos (P50,000.00) and Ten Thousand Pesos (10,000.00), respectively; and
4. Ordering respondent to pay complainant attorney's fees equivalent to ten (10%) per cent of the total award.

SO ORDERED

On appeal, the NLRC affirmed with modification thus:

PREMISES CONSIDERED, the Decision of September 15, 1988 is hereby MODIFIED with the deletion of awards representing moral/exemplary damages and attorney's fees. However, the award of backwages and other benefits shall not exceed three (3) years as laid down by the Supreme Court. Respondent is hereby directed to pay complainant backwages in the amount of NINETY SIX THOUSAND ONE HUNDRED NINETY TWO PESOS (P96,192.00) and/or other benefits due. The other findings stand AFFIRMED.

SO ORDERED.

Both parties moved for reconsideration, but their motions were denied by the NLRC in its resolution on July 8, 1993.

Hence this petition. Petitioner claims that the NLRC gravely abused its discretion in:

- a) holding that private respondent Centeno was denied due process of law prior to her dismissal; and
- b) failing to fully discuss all the six (6) assigned errors raised by the petitioner in its appeal by ignoring:
 - 1) the valid ground wherein petitioner based its termination of the service of private respondent, and that is loss of confidence;
 - 2) the specific circumstances that led the petitioner to lose its trust and confidence on private respondent; and
 - 3) the applicable settled law and jurisprudence that the private respondent, having been validly dismissed, is not entitled to reinstatement and backwages.

First. Contrary to the finding of the Labor Arbiter and the NLRC, private respondent was notified of the charge against her through a memorandum sent to her on January 7, 1985. Indeed she knew the reason for the “show-cause” order because before that, she and other employees had been asked to attend an investigation. The law requires that the employer must furnish the worker sought to be dismissed with two (2) written notices before termination may be validly affected: first, a notice apprising the employee of the particular acts or omission for which his dismissal is sought and, second, a subsequent notice informing the employee of the decision to dismiss him.^[2] In accordance with this requirement, private respondent was given the required notices, on January 7, 1985 and then on February 4, 1985.

The NLRC ruled that an investigation should have been conducted prior to private respondent's dismissal. As already noted, however, private respondent was informed of the charges against her and given an opportunity to answer the charges. Upon her request, she was given until January 18, 1985 within which to file her answer. But she failed to file her answer. Of course she later tried to explain that she did not find it necessary to do so because "there was, after all, no ground for any action against [her] and [she] did not feel obligated, therefore, to dispute the action which was baseless and unfounded."^[3] Furthermore, she claimed she thought "the Committee has prejudged the case against her."^[4]

Whatever her reason might have been, the fact is that petitioner waived the right to be heard in an investigation. Due process is not violated where a person is not heard because he has chosen not to give his side of the case. If he chooses to be silent when he has a right to speak, he cannot later be heard to complain that he was silenced.^[5] Private respondent having chosen not to answer, should not be allowed to turn the tables on her employer and claim that she was denied due process. Indeed, the requirement of due process is satisfied when a fair and reasonable opportunity to explain his side of the controversy is afforded the party. A formal or trial-type hearing is not at all times and in all circumstances essential, especially when the employee chooses not to speak.^[6] Under the circumstances of this case, it is too much to require petitioner to hear private respondent before the latter can be dismissed.

Happily, no liability was imposed on petitioner by either the Labor Arbiter or the NLRC despite the finding that petitioner had denied private respondent due process. Accordingly, all that we need to do in this case is to record our finding that petitioner fully complied with its duty under the law to accord due process to private respondent.

Second. Petitioner also claims that the NLRC gravely abused its discretion in not passing upon three (3) errors assigned by it on appeal.

We find the contention without merit. In affirming the Labor Arbiter, the NLRC found the evidence supporting the Labor Arbiter's factual findings to be substantial and for this reason apparently found it

unnecessary to make a separate discussion. Factual findings of administrative agencies are generally accorded respect and even finality in this Court if they are supported by substantial evidence.^[7]

Petitioner makes a “reconstruction” of the facts which, according to it, shows how the shortage incurred on November 16, 1984 was concealed.

The “reconstruction” is as follows:

- A) During the turn-over of the cash in vault by Mrs. Victoria Centeno to Mrs. Victoria Ubaña, after counting the cash in vault, no formal recording of how much cash was actually turned over was done. However, from the Cash Proof in November 16, 1984, it could be reconstructed and determined whether there is a shortage or not by the following figures:

Cash Balance, Nov. 15 ‘84	P589,572.02
Deduct: Cash Vales of Tellers at start of banking day	
Pico of Teller No. 1	P19,207.06
Pico of Teller No. 2	P21,666.21
Pico of Teller No. 3	P21,995.25 [P62,868.52]

Balance: Paper Bills & Coins	P536,703.50
Deduct: Deposit with Metrobank	356,400.00
Balance that should have been turned over	P170,303.50
Additional Vale-Coins-Teller 3 Balance	P11.00 P170,292.50
Add: Sorted Paper Bills turned over by the tellers to the cashiers:	
Teller No. 1	P100,000.00

Teller No. 2	P 40,000.00	
Teller No. 2	P147,200.00	
	[P46,202.64	[P333,402.64]

CORRECT CASH BALANCE		
November 16, 1984		P503,695.14
Cash Balance per Cash		
Proof November 16, 1984		P488,695.14

SHORTAGE		P15,000.00
		=====

B) The above P15,000.00 shortage was covered up in two (2) ways or stages:

First: In the original or untampered cash proof, the deposit to Metrobank was written originally as P371,400.00 instead of the actual deposit of P356,400.00. The writing of the P371,400.00 deposit to Metrobank was based on a deposit slip for P371,400.00 given to Mrs. Victoria Ubaña by Mrs. Victoria Centeno. The same deposit slip for P371,400.00 was also given to Mr. Alberto Jose, the Clearing clerk, who used the same to enter the P371,400.00 deposit with Metrobank in the Batch Sheet, as well as in the preparation of the Debit and Credit Tickets. The P15,000.00 shortage, which is the difference between P371,400.00 and P356,400.00 was therefore concealed in the P371,400.00 deposit to Metrobank, which actually and truly was for P356,400.00 only.

Second: When the genuine deposit slip to Metrobank for P356,400.00 was placed in the Cash Proof file and the spurious deposit slip for P371,400.00 was removed by whoever was responsible for the shortage, the cash proof will NOT BE BALANCED, so that the second step was to ADD P15,000.00 to the P11.00 cash vale of Teller No. 3 to make it appear as if the vale was for P15,011.00. In this way, the cash proof will again be balanced, since the decrease of P15,000.00 in deposit with Metrobank from P371,400.00 to P356,400.00 was shifted to the P15,011.00 vale which was actually P11.00 only.

Though the P371,400.00 deposit slip is now missing, the insertion of the P15,000.00 in the vale of Teller No. 3 is very apparent, since the duplicate vale in the possession of the Teller has not been tampered and remains as P11.00. Incidentally, it had not missed the petitioners' attention also that, by force of habit, Teller No. 3 was accustomed to placing a "hyphen" across the centavo figures in her Teller's vales when there was no centavo entry thereon; the added figures amounting to P15,000.00 on the other hand did not contain such a "hyphen" in the centavo of the vale, leading us to believe that the addition of P15,000.00 could not have been made by the Teller concerned". (Affidavit of Norberto Robleza dated 09 October 1985, pp. 4-6)

Loss of trust and confidence is a cause for dismissing an employee who is entrusted with fiducial matters, or with the custody, handling or care and protection of the employer's property.^[8] There is no dispute about this. But the employer must clearly and convincingly establish the facts and incidents upon which its loss of confidence in the employee may be fairly made to rest, otherwise, the dismissal will be rendered illegal.^[9]

Petitioner's claim is that although private respondent deposited only P356,400.00 in the Metrobank, she filled up a deposit slip showing the deposit to be P371,400.00 and this amount was recorded in the cash proof sheet and batch sheet for November 16, 1984. But there is no evidence to show this. The falsified deposit slip allegedly made by private respondent was not presented. Petitioner claimed it was missing. But as private respondent testified the amount of P356,400.00 which she deposited was recorded in the Metrobank passbook. She gave this passbook to Mrs. Ubaña on November 16, 1984. Yet the supposed discrepancy was not noticed by Mrs. Ubaña in preparing the cash proof sheet and the debit sheet who recorded P371,400.00 as having been deposited in Metrobank. Petitioner's allegation that Ms. Centeno misled the cashier and the clearing clerk into recording P371,400.00 cannot therefore be given credence.

Indeed, private respondent denied that she gave Mrs. Ubaña a falsified deposit slip showing a deposit of P371,400.00 because after the Metrobank picked up the deposit she made, private respondent handed to Mrs. Ubaña the deposit slip of P356,400.00 together with

the cash proof sheet of November 15, 1984 and the key to the vault.^[10] Besides, Mrs. Ubaña as already stated had the passbook. She could not have failed to notice that the amount deposited was P356,400.00 and not P371,400.00 as the bank now claims it was made to understand on November 16, 1984.

Petitioner claims that the party responsible for concealing the shortage altered the teller's vale and made it appear that the vale of Teller 3 (Antonette Reyes) was P15,011.00 when the fact was that it was only for P11.00 as shown in the duplicate vale in the possession of Reyes. This claim is subject to two objections. First, it was not shown that private respondent had custody of the vale or, if she had access to the document, that private respondent was the only one who had such access to it, so as to make her the only possible author of the alteration. Second, the fact that the altered vale of Teller 3 in the possession of the bank was not in the teller's customary way of recording does not necessarily mean that the vale she had was the authentic vale while that given to the clearing clerk was falsified. She could have altered her usual practice of recording.

It is noteworthy that the shortage was incurred on the day (November 16, 1984) the branch regular cashier, Mrs. Victoria Ubaña, reported for work. It was she in fact who prepared the cash proof sheet. The alteration in the cash proof sheet on that day could not have been made by private respondent. As an NBI handwriting expert stated under cross examination:

WITNESS

- A The supplemental report is also an answer to the first. The requested analysis should center on the handwritings of the two (2) persons, Mrs. Victoria Ubaña and Mrs. Victoria Centeno. In my first report dated December 3, 1985 my findings are as follows: The no 1 states that there are existing fundamental differences between the questioned handwritings or figures appearing on the questioned document and the standard handwritings/figures appearing on the standard documents marked as "SV-1" thru "SV-9" and those standards were the handwritings of one Victoria Ubaña. The result of which is that the

questioned handwritings and the standard handwritings were not written by one and the same person. And then in statement that the submitted standards, signatures under the specimen named Victoria Centeno any findings whether Victoria Centeno or not is the writer of the questioned handwritings, so I made the supplemental report to make a definite answer that all the figures and handwritings appearing on the cash proof sheet which is being questioned were not written by Victoria Centeno to answer this phrase. (Emphasis supplied)

Furthermore, the cash proof sheet and the vale were kept in the bank's vault, the key to which was held only by Mrs. Ubaña, as cashier of the bank.^[11] Any alteration in the documents by private respondent or by any party could, therefore, have easily been discovered by the cashier.

Petitioner further claims that private respondent's accounting method did not correctly reflect the bills from previous banking days and that taking into account all the entries, the amount not reflected was equivalent to the shortage. This contention is without merit. While the accounting method adopted by private respondent was different from the method used by Mrs. Ubaña, private respondent's method was nonetheless an acceptable bank procedure according to Mr. Robleza, petitioner's own witness.^[12] The method adopted by private respondent was accurate, otherwise it could not have been allowed by the bank.

Indeed private respondent was acting cashier for two months, from September 17, 1984 to November 15, 1984. During that period no shortage was ever reported. At the time the cash in the vault was turned over to Mrs. Ubaña, it was counted and the failure to record its amount at that time can only mean one thing: that the cash turned over to Mrs. Ubaña corresponded with the amount recorded in the cash proof sheet on November 15, 1984.

Private respondent had faithfully served petitioner bank for 19 years. Starting as a bank teller, she steadily rose to the position of assistant branch cashier. Considering this fact, petitioner should have been more careful in determining liability for the loss rather than merely

relying on what it calls circumstantial evidence of guilt. The fact that only private respondent did not answer the charge when required in the memorandum of petitioner is not an indication of her guilt. While we recognize that petitioner has a wide latitude in dismissing a bank officer, nonetheless, the evidence on which it acts must be substantial.

As the dismissal of private respondent is illegal, she is entitled to reinstatement to her former position without loss of seniority rights and to the payment to her of backwages.^[13] The NLRC correctly limited the award of backwages to three years, consistent with the rule at the time of private respondent's dismissal^[14] R.A. No. 6715, which amended Art. 279 of the Labor Code, awarding full backwages to illegally dismissed employees, cannot be retroactively applied to dismissals taking place before its effectively on March 21, 1989.^[15]

WHEREFORE, the Petition is **DISMISSED**.

SO ORDERED.

Regalado, Romero, Puno and Torres, Jr. JJ., concur.

[1] Rollo, p. 75.

[2] Jones vs. NLRC, 250 SCRA 668 (1995); Pampanga II Electric Cooperative, Inc. vs. NLRC, 250 SCRA 31 (1995); Nitto Enterprises vs. NLRC, 248 SCRA 654 (1995); Kingsize Manufacturing Corp. vs. NLRC, 238 SCRA 349 (1994); Pepsi-Cola Bottling Co., Inc. vs. NLRC, 210 SCRA 277 (1992).

[3] Petition citing private respondent's October 28, 1986 Affidavit, Rollo, p. 14.

[4] Private Respondent's Comment, Rollo, p. 166.

[5] Pepsi Cola Distributors of the Phils., Inc. vs. NLRC, 247 SCRA 386 (1995). Accord, Stronghold Insurance Co., Inc. vs. Court of Appeals, 205 SCRA 605 (1992).

[6] Stayfast Philippines Corp. vs. NLRC, 218 SCRA 596 (1993).

[7] E.g., Ex-Bataan Veterans Security Agency, Inc. vs. NLRC, 250 SCRA 418 (1995); Inter-Orient Maritime Enterprises vs. NLRC, 235 SCRA 268 (1993).

[8] E.g., Mapalo vs. NLRC, 233 SCRA 266 (1994); San Miguel Corp. vs. NLRC 211 SCRA 353 (1992).

[9] Philippine Commercial International Bank vs. NLRC, 247 SCRA 614 (1995); Estiva vs. NLRC, 225 SCRA 169 (1993).

[10] Rollo, p. 178.

[11] Respondent's Comment, Rollo, p. 169.

- [12] Labor Arbiter's Decision, Rollo, p. 63.
- [13] Labor Code, Art. 279.
- [14] PNOG vs. Leogardo, 175 SCRA 26 (1989); Feati University Club vs. Feati University 58 SCRA 395 (1974); Mercury Drug., Co. Inc. vs. NLRC, 56 SCRA 694 (1974).
- [15] Balladares vs. NLRC, 245 SCRA 213 (1995); Maranaw Hotels and Resort Corp. vs. 215 SCRA 500 (1992).

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